

1 Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). Petitioner does not
2 allege that she has been deprived of any federally protected right.
3 Instead, petitioner's claim involves only alleged state law errors,
4 and is not cognizable on federal habeas review.

5 Even if petitioner had presented a cognizable claim for relief,
6 she has not exhausted such a claim. A state prisoner is required to
7 exhaust all available state court remedies before a federal court may
8 grant habeas relief. 28 U.S.C. § 2254(b); O'Sullivan v. Boerckel, 526
9 U.S. 838, 842 (1999). The exhaustion requirement is satisfied when the
10 substance of a petitioner's federal claim has been fairly presented to
11 the state's highest court. See O'Sullivan, 526 U.S. at 844-845.

12 From the face of the petition, it is clear that petitioner has
13 never presented any claim to the California Supreme Court. Therefore,
14 she has not exhausted her state remedies. Although this Court has
15 discretion to stay a mixed habeas petition in order to allow the
16 petitioner to exhaust state remedies, see Rhines v. Webber, 544 U.S.
17 269, 277-278 (2005), it does not have discretion to stay a petition
18 containing only unexhausted claims. Raspberry v. Garcia, 448 F.3d
19 1150, 1154 (9th Cir. 2006) ("Once a district court determines that a
20 habeas petition contains only unexhausted claims, it need not inquire
21 further as to the petitioner's intentions. Instead, it may simply
22 dismiss the habeas petition for failure to exhaust."); Davis v. Adams,
23 2010 WL 1408290, *2 (C.D.Cal. 2010) (stating that a federal court
24 cannot stay a completely unexhausted petition), report and
25 recommendation adopted, 2010 WL 1408292 (C.D.Cal. 2010).

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28 Based upon the foregoing deficiencies, the petition for a writ of

1 habeas corpus is dismissed without prejudice.

2 10/3/14

3 Dated: _____

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6 Dale S. Fischer
7 United States District Judge
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